IN THE HIGH COURT OF DELHI

RSA No.228/2004

#Manchanda Boot House ..... Appellant
! through: Mr.Inderjeet Sharma, Adv.

VERSUS

$M/s. Maharaja Marketing ..... Respondent
^ through: Mr.V.K.Saini, Adv.

% DATE OF DECISION: 20.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
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1. The appeal is pending after notice without any substantial question of law being framed till date.

2. Question arises whether the appeal raises a substantial question of law or not. For the reason if no substantial question of law arises for consideration appeal has to be dismissed. If substantial question of law arises for consideration, same would be required to be framed.

3. Petitioner is the defendant. The respondent is the plaintiff. Suit was filed for recovery of Rs.76,377/- alleging that the defendant is engaged in the business of sale of footwear. That the

plaintiff is a distributor of branded footwear. That a representative of the plaintiff visited the defendant and the defendant agreed to purchase the footwear. That footwear were supplied against bills raised and delivery reflected in delivery challans. That the bills and the challans were duly accepted by the defendant evidenced by the signatures of the sole proprietor of the defendant thereon. That the terms and conditions of the sale were as printed in the bills.

4. Defendant sought leave to defend inter alia pleading as under :-

> "D. That the main allegation in the plaint against the defendant is that the defendant made regular orders and the supply was made to the defendant by the plaintiff firm that the defendant was habitual defaulter of payment, that the plaintiff firm started maintaining running account with the defendant and the defendant made partial payment in small instalments. It may however, be stated that the Bills filed by the plaintiff with the plaint nowhere suggest that the said bills have been received by the defendant. In fact the plaintiff had supplied defective shoes which were of no use to the defendant and the defendant had asked the plaintiff to take the shoes back and replace the same. The said defective shoes have neither been taken back by the plaintiff nor have their defects been removed by the plaintiff and thus, the defendant is not liable to pay any amount to the plaintiff towards the defective lots of shoes which had been sent by the plaintiff to the defendant. The same are lying with the defendant and the plaintiff be ordered to remove the same from the defendant's shop.
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> E. That it is then alleged in the plaint that on each and every supply made to the defendant, the defendant acknowledged the challan as well as the bill of the aforesaid supply but the defendant despite receipt of the Bills failed to make the payment to the plaintiff firm. The said challans have not been signed by the defendant or

> any of his employees as the same are forged and fabricated documents. Moreover, the defendant had time and again requested the plaintiff to remove the defective shoes supplied to the defendant but in spite of repeated requests he has not removed the same. Thus, on the one hand the plaintiff supplied lots of defective shoes to the defendant and on the other he has placed on record forged and fabricated documents in support of his claim."

5. It was also pleaded that the suit was not maintainable under Order 37 CPC.

6. Dealing with the plea that the suit was not maintainable under Order 37 CPC learned Trial judge held that a suit for recovery of a liquidated sum is maintainable if it is based on a written contract. The learned Judge opined that the bills if accepted would be evidence of a written contract. Thus, it was held that the suit was maintainable under Order 37 CPC.

7. In respect of the plea that goods received were defective and that no bills or challans were received by the defendant learned Trial Judge noted that the bills raised are between 7.4.2002 to 27.6.2002 and that neither had the defendant pleaded nor shown any document that till plaintiff served a legal notice upon the defendant on 28.7.2003 the defendant had intimated the defects and rejection of the goods. Qua the plea whether the bills and the challans bore signatures of the sole proprietor of the defendant learned Trial Judge held that the bills show the signatures of the sole proprietor of the defendant thereon.

8. So holding, leave to defend was declined. Appeal was

filed. First Appellate Court concurred with the view taken by the learned Trial Judge.

9. Suffice would it be to record that a bill or delivery challan is a written contract between the parties if it is shown that under the bill the buyer received the goods.

10. A perusal of the application filed by the defendant seeking leave to defend shows that the defendant admitted receipt of the goods but alleged that the goods were defective. It would be relevant to note that the defendant did not place on record much less plead that the plaintiff had raised some other bills on the defendant when goods were supplied.

11. In commercial transactions bills are raised not only for the purpose of maintaining accounts but even as per the requirement of income tax laws, sale tax laws and excise laws.

12. Thus the plea that the bills and the challans are fabricated documents is nothing but moonshine.

13. Section 42 of the Sale of Goods Act reads as under :-

> "**42. <u>Acceptance</u>.-** The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them."

14. It is apparent that where rejection of goods is not intimated to the seller within a reasonable time the goods are

deemed to be accepted.

15. Goods in question are footwear. Last supply was effected on 27.6.2002. There is neither a plea nor any document to show that till plaintiff served a legal notice on 28.7.2003 goods were rejected under intimation to the plaintiff. Thus, the goods would be deemed to be accepted.

16. Consequences of law have to flow.

17. No question of law much less substantial question of law arise for consideration.

18. Before concluding I may note that the petitioner has filed CM.No.2306/2005 bringing to the notice of this court certain further events which have transpired.

19. The appellant has not been granted any stay in the instant proceedings. Decree was put into execution. Objections under Section 47 CPC were filed. The objections were dismissed as frivolous by the Executing Court vide order dated 1.10.2004. While dismissing the application cost of Rs.2,000/- was imposed. For unexplainable reasons learned Executing Court amended the decree by adding in the decree the cost of Rs.2,000/- which was imposed vide order dated 1.10.2004.

20. Vide CM.No.2306/2005 it is prayed that the amended decree be quashed for the reason the Executing Court cannot amend the decree.

21. Learned Executing Court has acted illegally in amending the decree. If objections under Section 47 CPC were dismissed with cost said cost has to be recovered independently as a decree. But the original decree cannot be tinkered with. Thus, I clarify that the decree which would have to be executed is as originally drawn. Cost of Rs.2,000/- can also be recovered by an independent execution.

22. The appeal is dismissed.

November 20, 2007 **PRADEEP NANDRAJOG, J.**
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